HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL No.2536 OF 2005

Between:

T.Suryanayak

.. APPELLANT

AND

The District Collector, Khammam & Others.

.. RESPONDENTS

:: JUDGMENT ::

Counsel for the Appellant : Sri Kowturu Vinaya Kumar

Counsel for the Respondents : G.P. for Civil Supplies

23rd December, 2005

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Per G.S. Singhvi, CJ

Having failed to convince the learned Single Judge that order dated 29.10.2002 passed by Revenue Divisional Officer, Khammam (respondent No.3), cancelling his authorization as fair price shop dealer and orders dated 25.1.2003 and 15.10.2005 passed by Joint Collector and Collector, Khammam respectively, dismissing the appeal and revision filed against order dated 29.10.2002 suffer from any jurisdictional infirmity or error of law apparent on the face of record, the appellant has filed this appeal under Clause 15 of Letters Patent with the prayer that order dated 29.11.2005 passed by the learned Single Judge in writ petition No.24836 of 2005 may be set aside and orders passed by the three authorities under the A.P. State Public Distribution System (Control) Order, 2001 may be quashed.

We have heard learned counsel for the appellant and the learned Government Pleader for Civil Supplies and carefully perused the record.

Before adverting to the factual matrix of the case and the grounds taken by the appellant in the writ petition for challenging orders dated 29.10.2002, 25.1.2003 and 15.10.2005, we may notice the parameters laid down by the Supreme Court for issuance of a writ of certiorary by the High Courts. It is well-settled that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action

complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S.Radhakrishnan** the Supreme Court considered scope of the High Courts' power to issue a writ of certiorari and held:

> "A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit

admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised."

In **Surya Dev Rai v. Ram Chander Rao** the Supreme Court noted the history of the development of High Courts' jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

i. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where

the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii. The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii. In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv. The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not

> intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

In the above backdrop, we shall now consider whether order dated 29.10.2002 passed by Revenue Divisional Officer, Khammam for cancellation of the appellant's authorization as Fair Price Shop Dealer is vitiated by an error of law warranting interference under Article 226 of the Constitution. A reading of that order shows that the appellant's Fair Price Shop No.1, Banapuram, which is located in the house of one Sri Avula Varda Reddy was inspected by Senior Revenue Inspector (EFL), Khammam on 31.5.2002. The officer concerned found several discrepancies in the record. He also found that the dealer had tampered with the record, distributed rice to non-card-holders and committed other irregularities. On receipt of the inspection report, Revenue Divisional Officer, Khammam issued notice dated 11.10.2002 and called upon the appellant to show cause against the proposed cancellation of his authorization. The charges enumerated in the show cause notice were as under;

> "Charge No. I :- That there is variation of stock of Qtls. 12.55 Rice and 0.77 kgs. Sugar less in the ground

balance with stock register.

Charge No. II :- That the dealer has tampered the issues in the record willfully.

Charge No. III :- That the dealer has distributed the Rice to non-card holders.

Charge No. VI :- That the dealer has distributed 0.25 Kgs. Rice to AAY Beneficiaries instead of
0.35 kgs."

The appellant submitted written explanation to controvert the allegations levelled against him. After considering the same, Revenue Divisional Officer passed order dated 29.10.2002, whereby he cancelled the authorization. He discussed each of the charge levelled against the appellant, considered the explanation given by him and recorded reasoned conclusion that all the allegations are proved. The appellant challenged that order by filing an appeal, which was dismissed by Joint Collector, Khammam vide his order dated 25.1.2003. He then filed revision. The same was dismissed by Collector, Khammam vide his order dated 15.10.2005. He then carried the matter to this Court by filing petition under Article 226 of the Constitution, which was dismissed by the learned Single Judge on 29-11-2005 by recording the following observations –

> "Admittedly, in the instant case, enquiry has been conducted by way of giving a show cause notice and after considering the explanation, a reasoned order has been passed. As per Clause 5(4) the legal requirements that have to be followed are the appointing authority has to make an enquiry, as may be deemed necessary and the order has to be passed after recording the reasons in writing. In a given case where the dealers are required to conduct an enquiry in a particular fashion or request to give the personal hearing and that request is exempted, of course, it is a different matter to consider whether the reasonable opportunity of being heard is given or not, but in the absence of any specific request for offering the personal hearing, it cannot be said that the principles of natural justice are violated.
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> The legal requirements are indeed to make an enquiry and

> reasons to be recorded in writing in the order of suspension or cancellation, as the case may be. In such circumstances, I am of the opinion, that though the requirements have been followed in the instant case, it cannot be said that the principles of natural justice have been violated."

Sri Kowturi Vinay Kumar, learned counsel for the appellant argued that the order passed by the Revenue Divisional Officer cancelling the authorization of the appellant was vitiated due to patent violation of the rules of natural justice, inasmuch as, he did not give opportunity of personal hearing to the appellant and the Joint Collector and Collector, Khammam committed a serious error by confirming that order. Learned counsel further argued that the learned Single Judge also committed an error by rejecting the appellant's plea that denial of opportunity of personal hearing to him had the effect of vitiating the order passed by the Revenue Divisional Officer.

In the context of aforementioned submission of the learned counsel, we enquired from him whether in the explanation filed in response to the show cause notice or at any time before passing of order dated 29.10.2002, his client had asked for personal hearing. In reply, Sri Kowturu Vinaya Kumar fairly stated that the record made available to him does not show that his client had made a request for personal hearing. It is thus clear that the plea of denial of opportunity of hearing raised by the appellant is an afterthought. Therefore, we are unable to agree with the learned counsel that the order of cancellation of authorization is vitiated due to violation of the rule of hearing.

A reading of Clause 5 (4) of A.P. State Public Distribution System (Control) Order, 2001 makes it clear that before cancelling the authorization, the appointing authority is required to give show cause notice to the dealer, consider his explanation and make such enquiry as may be considered necessary. That clause does not contain an express requirement of personal hearing to the dealer as

a condition precedent for cancellation of his authorization and from the setting in which the provision of authorization of cancellation appears, it is not possible to infer implied requirement of giving opportunity of personal hearing to the dealer.

There is another reason for our disinclination to entertain the appellant's challenge to the order passed by the Revenue Divisional Officer on the ground of denial of opportunity of personal hearing. Neither in the appeal or revision filed before the Joint Collector and Collector, Khammam respectively nor in the writ petition filed before this Court, the appellant pleaded that on account of the denial of opportunity of personal hearing, his cause had been prejudiced. Even before us, the learned Counsel for appellant could not show that the so-called denial of opportunity of personal hearing resulted in prejudice to the cause of his client or failure of justice. In early 60's and 70's, the Superior Courts had treated violation of the rule of hearing as sufficient to invalidate the administrative and quasi-judicial actions and orders, without requiring the petitioner to plead and prove prejudice, but in the recent decisions, the Supreme Court had consistently held that mere violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the petitioner pleads and prima facie shows that his cause has been prejudiced. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi Vs. State of Orissa**, **R.C.Sharma Vs. Union of India**, **Sunil Kumar Banerjee Vs. State of West Bengal, K.N. Tripathi Vs. State Bank of India**, **Mumtaz Hussein Ansari Vs. State of U.P.**, **Kashinath Dikshita Vs. Union of India**, **Chandrama Tiwari Vs. Union of India**, **Managing Director, ECIL Vs. B. Karunakar**, **Krishanlal Vs. State of Jammu and Kashmir**, **State Bank of Patiala Vs. S.K. Sharma** , **S.K. Singh Vs. Central Bank of India**, **State of Uttar Pradesh Vs. Shatrughanlal**, **Food Corporation of India Vs. Padamkumar Bhuvan**, **State of Uttar Pradesh Vs. Harendra Arora**, **Oriental Insurance Company Vs. S. Balakrishnan, State of Uttar Pradesh Vs. Rameshchand Manglik**;

Canara Bank Vs. Debasis Das, **Indra Bhanu Gaur Vs. Committee, Management of M.M Degree College** and **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick**.

In **B. Karunakar's** case[10] (supra) the Constitution Bench considered the apparent conflict of views expressed by different Benches of the Supreme Court in **Union of India Vs. Mohd. Ramzan Khan** and **K.C. Asthana Vs. State of Uttar Pradesh** on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). In the course of judgment, their Lordships of the Supreme Court framed the main question whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Supreme Court also framed the following incidental questions:

i. Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

ii. Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

iii. Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

iv. Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

v. What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

vi. From what date the law requiring furnishing of the report, should come into operation?

vii. Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the basic question in the affirmative, their Lordships considered the ancillary questions and answered question No.(v) in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

> "Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora's case**[16] (supra), a Division Bench of the Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar**[10] (supra) and laid down the following propositions:

> i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.
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> ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular

employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College**[20] (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

"It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental

proceedings."

In **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick**[21] (supra) the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar's**[10] **case** (supra) and observed that the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

In the present case, the appellant has neither pleaded nor any evidence has been produced by him to show that his cause has been prejudiced on account of the non-grant of opportunity of personal hearing by the Revenue Divisional Officer. Therefore, we do not find any valid ground or justification to nullify orders dated 29-10-2002, 25-1-2003 and 15-10-2005 only on the ground that the appellant had not been personally heard.

For the reasons mentioned above, we hold that the learned Single Judge did not commit any error by refusing to quash the order passed by the Revenue Divisional Officer cancelling the authorization of the appellant as also the orders passed by the Joint Collector and Collector, Khammam who refused to interfere with the order of the Revenue Divisional Officer.

In the result, the appeal is dismissed. However, the parties are left to bear their own costs.

G.S. SINGHVI, CJ

23rd December, 2005

R. SUBHASH REDDY, J

Ajr / svs